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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOMALES BAY OYSTER COMPANY, )  
 LLC, )  
 )  
 Defendant. )

CASE NO. 3:17-cv-255

**CONSENT DECREE**

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1 Plaintiff United States of America, on behalf of the United States Department of the  
2 Interior, National Park Service, has filed a complaint concurrently with this Consent Decree,  
3 alleging that Defendant, Tomales Bay Oyster Company, LLC, is liable for damages and recovery  
4 of response and natural resource damage assessment costs under the System Unit Resource  
5 Protection Act (“SURPA” or “Act”), 54 U.S.C. §§ 100721 to 100725, and California trespass  
6 law, including California Civil Code § 3346 and the California Code of Civil Procedure § 733.  
7

8 The Complaint against Defendant alleges that between 2010 and July 2014 Defendant  
9 wrongfully created and used a parking lot on a parcel of land owned by the United States in the  
10 Golden Gate National Recreation Area (“GGNRA”). Congress established the GGNRA to  
11 preserve for public use outstanding natural, scenic, historic, and recreational areas of San  
12 Francisco and Marin Counties, and it directed the Secretary of the Department of the Interior to  
13 “preserve [the GGNRA], as far as possible, in its natural setting, and protect it from development  
14 and uses which would destroy the scenic beauty and natural character of the area.” 16 U.S.C. §  
15 460bb. Resources within the GGNRA therefore constitute “system unit resources” within the  
16 meaning of SURPA, 54 U.S.C. § 100721. The Complaint alleges that Defendant repeatedly  
17 entered the United States’ property without permission and destroyed system unit resources,  
18 detracting from the GGNRA’s intended purpose and causing the United States to incur response  
19 and natural resource damage assessment costs. The Complaint seeks to recover the United  
20 States’ response costs, along with damages under SURPA and California trespass law.  
21  
22  
23

24 Defendant does not admit any liability to the United States arising out of the transactions  
25 or occurrences alleged in the Complaint.  
26  
27  
28

1 The Parties recognize, and the Court by entering this Consent Decree finds, that this  
2 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between  
3 the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

4 NOW, THEREFORE, before the taking of any testimony, without the adjudication or  
5 admission of any issue of fact or law and with the consent of the Parties, IT IS HEREBY  
6 ADJUDGED, ORDERED, AND DECREED as follows:  
7

8 I. JURISDICTION AND VENUE  
9

10 1. This Court has jurisdiction over the subject matter of this action, pursuant to  
11 28 U.S.C. §§ 1331 and 1345, and 54 U.S.C. § 100723, and over the Parties. Venue lies in this  
12 District pursuant to 28 U.S.C. § 1391(b) because Defendant resides and is located in this judicial  
13 district and the events in the Complaint are alleged to have occurred in this judicial district.  
14 Intradistrict assignment is proper in the San Francisco or the Oakland Division pursuant to Civil  
15 L.R. 3-2(d) because the events alleged in the Complaint occurred in Marin County. For  
16 purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's  
17 jurisdiction over this Decree and any such action over Defendant, and Defendant consents to  
18 venue in this judicial district.  
19

20 2. For purposes of this Consent Decree, Defendant agrees that the Complaint states  
21 claims upon which relief may be granted pursuant to 54 U.S.C. § 100722 and California trespass  
22 law, including California Civil Code § 3346 and the California Code of Civil Procedure § 733.  
23

24 II. APPLICABILITY

25 3. The obligations of this Consent Decree apply to and are binding upon the United  
26 States and upon Defendant and any successors, assigns, or other entities or persons otherwise  
27 bound by law.  
28

III. DEFINITIONS

1  
2 4. Terms used in this Consent decree that are defined in SURPA shall have the  
3 meanings assigned to them in the Act, unless otherwise provided in this Decree. Whenever the  
4 terms set forth below are used in this Consent Decree, the following definitions shall apply:  
5

6 “Complaint” shall mean the complaint filed by the United States in this action;

7 “Consent Decree” or “Decree” shall mean this Decree;

8 “Day” shall mean a calendar day unless expressly stated to be a business day. In  
9 computing any period of time under this Consent Decree, where the last day would fall on a  
10 Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next  
11 business day;  
12

13 “Defendant” shall mean Tomales Bay Oyster Company, LLC;

14 “DOI” shall mean the United States Department of the Interior and any of its successor  
15 departments or agencies;  
16

17 “Effective Date” shall have the definition provided in Section IX.

18 “NPS” shall mean the United States National Park Service and any of its successor  
19 departments or agencies;

20 “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;

21 “Parties” shall mean the United States and Defendant;

22 “Section” shall mean a portion of this Decree identified by a roman numeral;  
23

24 “The NPS parcel” shall mean the land described in Exhibit “A” to the Grant Deed  
25 recorded on February 8, 1994, as document number 94-010730 in the Official Records of Marin  
26 County, California;  
27  
28

1 “Unauthorized Activity” shall mean Defendant’s alleged modification and use of the NPS  
2 parcel between 2010 and July 2014, including the cutting of trees and brush; excavation of soil;  
3 removal of berms; construction of a parking lot; and introduction of gravel/aggregate and other  
4 foreign material to the NPS parcel;  
5

6 “United States” shall mean the United States of America, acting on behalf of DOI and  
7 NPS.

8 IV. PAYMENT

9 5. Within 30 Days after the Effective Date, Defendant shall pay to the United States  
10 the sum of **\$280,000**.

11 6. Defendant shall pay the amount due at [www.pay.gov](http://www.pay.gov) to the U.S. Department of  
12 Justice account, in accordance with instructions provided to Defendant by the Financial  
13 Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of  
14 California after the Effective Date. The payment instructions provided by the FLU will include a  
15 Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify  
16 all payments required to be made in accordance with this Consent Decree. The FLU will provide  
17 the payment instructions to:  
18  
19

20 Peter Prows, Esq.  
21 Briscoe, Ivester & Bazel, LLP  
22 155 Sansome Street  
23 Seventh Floor  
24 San Francisco, CA 94104  
(415) 402-2700  
pprows@briscoelaw.net

25 on behalf of Defendant. Defendant may change the individual to receive payment instructions  
26 on its behalf by providing written notice of such change to the United States and DOI in  
27 accordance with Section VIII (Notices).  
28

1 At the time of payment, Defendant shall send notice that payment has been made to the  
2 United States via email or regular mail in accordance with Section VIII. Such notice shall state  
3 that the payment is for the amount owed pursuant to the Consent Decree in *United States v.*  
4 *Tomales Bay Oyster Company, LLC*, and shall reference the civil action number, CDCS Number,  
5 and DOJ case number 90-5-1-1-11544.  
6

7 7. From the amount to be paid by Defendant in Paragraph 5, the United States  
8 Department of Justice shall deposit \$267,742 in DOI's Natural Resource Damage Assessment  
9 and Restoration Fund, to be applied toward response and natural resource damage assessment  
10 costs incurred by the United States, and/or to be managed by DOI for natural resource restoration  
11 projects related to the Unauthorized Activity. The United States Department of Justice shall  
12 deposit the remaining \$12,258 in the United States Treasury.  
13

14 V. STIPULATED PENALTIES

15 8. If Defendant fails to pay the amount required to be paid under Section IV when  
16 due, Defendant shall pay a stipulated penalty of \$2,000 per Day for each Day that the payment is  
17 late. The stipulated penalty shall begin to accrue on the Day after payment is due, and shall  
18 continue to accrue until Defendant pays the full amount due under Section IV.  
19

20 9. In the event the payment, or any part of the payment, under Section IV is not  
21 made when due, Defendant shall pay interest on the unpaid balance commencing on the payment  
22 due date and accruing through the date of full payment. Interest shall be calculated at the rate set  
23 forth in 28 U.S.C. § 1961.  
24

25 10. Defendant shall pay any stipulated penalty within 30 Days of receiving written  
26 demand from the United States. Defendant shall pay stipulated penalties owing to the United  
27  
28

1 States in the manner set forth and with the confirmation notices in Section IV, except that the  
2 transmittal letter shall state that the payment is for stipulated penalties.

3 11. Non-Exclusivity of Remedy. Stipulated penalties are not the United States'  
4 exclusive remedy for violations of this Consent Decree. The United States expressly reserves the  
5 right to seek any other relief it deems appropriate for Defendant's violation of this Decree or  
6 applicable law, including but not limited to an action for injunctive relief or contempt.  
7

8 12. The United States may in the unreviewable exercise of its discretion, reduce or  
9 waive stipulated penalties otherwise due it under this Consent Decree.  
10

11 VI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

12 13. This Consent Decree resolves the civil claims of the United States arising under  
13 SURPA, California Civil Code § 3346, and California Code of Civil Procedure § 733 resulting  
14 from the Unauthorized Activity.  
15

16 14. The United States reserves all legal and equitable remedies available to enforce  
17 the provisions of this Consent Decree, and this Consent Decree is without prejudice to all rights  
18 of the United States against Defendant with respect to matters other than those specified in  
19 Paragraph 13.  
20

21 15. In any subsequent administrative or judicial proceeding initiated by the United  
22 States for injunctive relief, civil penalties, or other appropriate relief, Defendant shall not assert,  
23 and may not maintain, any defense or claim based upon the principles of waiver, res judicata,  
24 collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based  
25 upon any contention that the claims raised by the United States in the subsequent proceeding  
26 were or should have been brought in the instant case, except with respect to claims that have  
27 been specifically resolved pursuant to Paragraph 13.  
28



1 16. This Consent Decree does not limit or affect the rights of Defendant or of the  
2 United States against any third parties, not party to this Consent Decree, nor does it limit the  
3 rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise  
4 provided by law.  
5

6 17. This Consent Decree shall not be construed to create rights in, or grant any cause  
7 of action to, any third party not party to this Consent Decree.  
8

9 18. Defendant agrees not to bring any claims or causes of action against the United  
10 States and its employees, experts, or contractors arising from the Unauthorized Activity or with  
11 respect to the allegations in the Complaint, including but not limited to: (1) any direct or indirect  
12 claim for reimbursement of any payment; (2) any direct or indirect claim for contribution under  
13 SURPA; and (3) any claim under the United States Constitution. Defendant further covenants  
14 not to seek from any local, state, or federal authority any permit to use the NPS parcel arising  
15 from the Unauthorized Activity or any other activity.  
16

17 19. Defendant agrees to abandon the NPS parcel and not to enter or use the NPS  
18 parcel without express written permission from the Superintendent of the Point Reyes National  
19 Seashore, except that nothing in this Decree shall prevent Defendant or any member, manager,  
20 agent, or employee of Defendant, current or former, from exercising any right or privilege  
21 related to the NPS parcel that he or she may have as a member of the general public.  
22

23 20. Defendant is not responsible for completing any natural resource restoration  
24 projects on the NPS parcel related to the Unauthorized Activity.  
25

26 VII. COSTS

27 21. The Parties shall bear their own costs of this action, including attorneys' fees,  
28 except that the United States shall be entitled to collect the costs (including attorneys' fees)

1 incurred in any action necessary to collect any portion of the amount due under Section IV or  
2 any stipulated penalties due but not paid by Defendant.

3 VIII. NOTICES

4 22. Unless otherwise specified in this Decree, whenever notifications, submissions, or  
5 communications are required by this Consent Decree, they shall be made in writing and  
6 addressed as follows:  
7

8 As to the United States by email: eescdcopy.enrd@usdoj.gov  
9 Re: DJ # 90-5-1-1-11544

10 and

11 barbara.goodyear@sol.doi.gov  
12 Re: Tomales Bay Oyster Company

13 and

14 karen\_battle-sanborn@nps.gov  
15 Re: Tomales Bay Oyster Company

16 As to the United States by mail: EES Case Management Unit  
17 Environment and Natural Resources Division  
18 U.S. Department of Justice  
19 P.O. Box 7611  
20 Washington, D.C. 20044-7611  
21 Re: DJ # 90-5-1-1-1154

22 and

23 Barbara Goodyear, Esq.  
24 United States Department of the Interior  
25 Office of the Field Solicitor  
26 Pacific Southwest Region  
27 333 Bush Street, Suite 775  
28 San Francisco, CA 94101

and

Karen Battle  
Damage Assessment Case Officer  
National Park Service  
1201 Oakridge Drive  
Fort Collins, CO 80525

1 As to Defendant by email: pprows@briscoelaw.net  
2 Re: Tomales Bay Oyster Company

3 As to Defendant by Mail: Peter Prows, Esq.  
4 Briscoe, Ivester & Bazel, LLP  
5 155 Sansome Street  
6 Seventh Floor  
7 San Francisco, CA 94104

8 23. Any Party may, by written notice to the other Parties, change its designated notice  
9 recipient or notice address provided above.

10 24. Notices submitted pursuant to this Section shall be deemed submitted upon  
11 mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties  
12 in writing.

#### 13 IX. EFFECTIVE DATE

14 25. The Effective Date of this Consent Decree shall be the date upon which this  
15 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,  
16 whichever occurs first, as recorded on the Court's docket.

#### 17 X. RETENTION OF JURISDICTION

18 26. This Court shall retain jurisdiction over this matter for the purpose of interpreting  
19 and enforcing the terms of this Consent Decree.

#### 20 XI. MODIFICATION

21 27. The terms of this Consent Decree may be modified only by a subsequent written  
22 agreement signed by all the Parties. Where the modification constitutes a material change to this  
23 Decree, it shall be effective only upon approval by the Court.  
24  
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XII. PUBLIC PARTICIPATION

1  
2 28. This Consent Decree shall be lodged with the Court for a period of not less than  
3 30 Days for public notice and comment. The United States reserves the right to withdraw or  
4 withhold its consent if the comments regarding the Consent Decree disclose facts or  
5 considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.  
6 Defendant consents to entry of this Consent Decree without further notice and agrees not to  
7 withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision  
8 of the Decree, unless the United States has notified Defendant in writing that it no longer  
9 supports entry of the Decree.  
10  
11

XIII. SIGNATORIES/SERVICE

12  
13 29. Each undersigned representative of Defendant and the Assistant Attorney General  
14 for the Environment and Natural Resources Division of the Department of Justice certifies that  
15 he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to  
16 execute and legally bind the Party he or she represents to this document.  
17

18 30. This Consent Decree may be signed in counterparts, and its validity shall not be  
19 challenged on that basis. Defendant agrees to accept service of process by mail with respect to  
20 all matters arising under or relating to this Consent Decree and to waive the formal service  
21 requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any  
22 applicable Local Rules of this Court including, but not limited to, service of a summons.  
23 Defendant need not file an answer to the complaint in this action unless or until the Court  
24 expressly declines to enter this Consent Decree.  
25  
26  
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XIV. INTEGRATION

1  
2 31. This Consent Decree constitutes the final, complete, and exclusive agreement and  
3 understanding among the Parties with respect to the settlement embodied in the Decree and  
4 supersedes all prior agreements and understandings, whether oral or written, concerning the  
5 settlement embodied herein. The Parties acknowledge that there are no representations,  
6 agreements, or understandings relating to the settlement other than those expressly contained in  
7 this Consent Decree.  
8

9  
10 XV. FINAL JUDGMENT


11 32. Upon approval and entry of this Consent Decree by the Court, this Consent  
12 Decree shall constitute a final judgment of the Court as to the United States and Defendant.  
13

14 Dated and entered this \_\_ day of \_\_\_\_\_, 2017.  
15


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17 \_\_\_\_\_  
18 UNITED STATES DISTRICT JUDGE  
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FOR THE UNITED STATES OF AMERICA:

Jan. 16, 2017  
Date

  
BRUCE S. GELBER  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

1/17/17  
Date

  
STEFAN J. BACHMAN  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

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1/6/2017  
Date

FOR THE U.S. DEPARTMENT OF THE INTERIOR:



CLEMENTINE JOSEPHSON  
Regional Solicitor  
Office of the Solicitor  
Pacific Southwest Region

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FOR TOMALES BAY OYSTER COMPANY, LLC:

12/25/16  
Date

  
\_\_\_\_\_

CHARLES TOD FRIEND  
Managing Member, Tomales Bay Oyster Company, LLC  
15479 State Highway 1  
Marshall, California 94940